IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 74 of 1995.

Date of decision: 5.3.2007.

Chint Ram & ors. ….. **Appellants.**

Vs.

Rasilo alias Rasilo Ram & ors. …. **Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr. K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate.**

For the Respondents : **Mr. Ankush Sood, Advocate, for respondents No. 1 & 3.**

Mr. B.N.Gupta, Advocate, for respondents No. 7 to 9.

Surjit Singh, Judge (Oral).

This second appeal by the defendants is directed against the judgement and decree of the first appellate court (District Judge), whereby their appeal against the judgement and decree passed by the trial court, in a suit brought against them by respondent-plaintiff Rasilo, has been dismissed and the judgement and the decree of the trial court, affirmed.

2. Relevant facts may be noticed. Respondent-plaintiff Rasilo, filed a suit for permanent prohibitory injunction, restraining the appellants- defendants and proforma respondents from causing interference in his land, measuring 17 Bighas 4 Biswas, which he

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Whether the reporters of the local papers may be allowed to see the Judgment?

claimed to have got from his father late Sh. Bhagat Ram, under a will dated 10.6.1975. It was alleged that Bhagat Ram, who was the owner of the suit land, made a will in favour of the plaintiff during his life time and after his death on 6.9.1977, the appellants and proforma respondents, forcibly occupied the suit land and the plaintiff then brought a suit for possession of the suit land on the strength of the will and his suit was decreed, vide judgement and decree dated 13.5.1988, and thereafter on 30.11.1988, in execution of the said decree, possession was also delivered to him. It was alleged that thereafter the plaintiff-respondent sowed wheat crop in the suit land, but the defendants on 31st May, 1999, forcibly removed that crop and caused a loss to the tune of Rs. 40,000/-. Therefore, in addition to seeking a decree for permanent prohibitory injunction, restraining the defendants- appellants and proforma respondents from causing any interference in his possession, the respondent- plaintiff sued for recovery of a sum of Rs.40,000/-, on account of damages.

3. Appellants and proforma defendants contested the suit and alleged that Bhagat Ram, who was the father of the plaintiff, as also some of the defendants and grand father of the other defendants, had given the suit land to the defendants during his life time and therefore, they were in lawful possession thereof. It was alleged that the decree in previous suit had been obtained by the plaintiff by making misrepresentation and playing fraud on the court and therefore, the same was not binding on them. They denied that that decree had been executed and the possession delivered to the plaintiff. They claimed that they themselves were the owners of the

suit land. They filed a counter claim, seeking declaration that the decree dated 13.5.1988, passed in the earlier suit was obtained by playing fraud and making misrepresentation. Plaintiff –respondent contested the counter claim and denied that he had made any misrepresentation or played any fraud and alleged that the suit was contested by the appellants-defendants and proforma respondents, and hence, there was no question of misrepresentation or fraud. Trial court framed various issues on the pleadings of the parties and thereafter received evidence adduced by the parties and concluded that the plaintiff was the owner of the suit land on the strength of the decree passed in his favour in the previous suit and that the possession had also been obtained by him by executing the said decree, but the appellants- defendants and proforma respondents interfered in his possession. Consequently the claim for issuance of permanent prohibitory injunction, suit was decreed. Claim for damages was, however, dismissed. Counter-claim of the appellants-defendants was dismissed with the finding that no misrepresentation had been made or fraud played by the plaintiff in the previous suit. Appeal filed by appellants in the court of District Judge, stands dismissed.

4. The present appeal was admitted on the following substantial questions of law:

1. Whether the findings of the court below are vitiated for failing to take into consideration the presumption of truth attached to the revenue records particularly the jamabandies for the year 1976-77 Ext. P6 and for the year 1981-82?

2. Whether in view of the fact that Shri Bhagat Ram had relinquished his rights in favour of the appellant, he could bequeath the said very property to the plaintiff?

3. Whether in view of the fact that the will had not been produced by the plaintiff as adverse inference had to be drawn against the plaintiff and findings as to his ownership recorded in the absence thereof and a proof of a valid will in favour of the plaintiff?

4. Whether the findings of the court below are vitiated being based on inadmissible documentary evidence particularly PW4/B which had not been proved in accordance with law?

5. Whether in view of the fact that the appellant had been conferred ownership rights by mutation No. 417 dated 3.1.1987 under Section 104 of the H.P. Tenancy and Land Reforms Act, the present suit was not maintainable and the civil court had jurisdiction to pass the decree?

5. As regards the first question on which the appeal has been admitted, the allegation is that in the jamabandies for the year 1976-77 Ex. P 6 and for the year 1981-82, appellants- defendants are recorded in possession of the suit land and these entries have been ignored by the trial court while rendering decision holding the respondent- plaintiff as owner in possession. As a matter of fact, the jamabandies referred to in the question are irrelevant, in view of the fact that in the year 1987, plaintiff had filed a suit claiming that he was the owner of the suit land on the strength of the will made in his favour by late Sh. Bhagat Ram and that suit was decreed. A decree

for possession was passed in his favour on 13.5.1988. Therefore, the entries in the jamabandies for the year prior to rendering of the decision in the said suit were not relevant. The judgement in the previous suit operates as res-judicata between the parties. Hence the question is answered against the appellants.

6. So far as Question No.2 is concerned, neither it is the pleaded version of the appellants nor did they lead any evidence to show that late Sh. Bhagat Ram had relinquished his ownership rights in favour of the appellants- defendants, and hence, he was not competent to bequeath the suit property. Not only this, this plea was not available to the appellants- defendants in the present lis because of the finding in the previous suit that late Sh. Bhagat Ram was the owner of the suit property and he had bequeathed the same in favour of the plaintiff- respondent. This plea even if taken in the present litigation would have been barred by rule of constructive res-judicata, as also by virtue of the provision of Order 2, Rule 2 of the Code of Civil Procedure. Accordingly, this question is also answered against the appellants.

7. Coming to Question No.3, there was hardly any need for production of will during the trial of the present case. The will had been held to be duly and validly executed in the previous litigation, which was between the same parties and hence, the finding had become res-judicata. So this question is also answered against the appellants.

8. Ex. PW 4/B, is the certified copy of the statement of some of the defendants, per which they had surrendered the

possession of the suit land in favour of the plaintiff, in execution of the decree passed in the previous suit. It has not been pointed out how the statement was not admissible. Hence the question is answered against the appellants.

9. Coming to last question, it is not the case of the appellants- defendants that they were tenants under late Sh. Bhagat Ram and ownership rights of Bhagat Ram were conferred upon them in accordance with the provisions of Section 104 of H.P. Tenancy and Land Reforms Act. Admittedly, the appellants- defendants and proforma respondents are natural heirs of late Bhagat Ram alongwith the plaintiff- respondent. Appellants- defendants' plea was that property had been given to them by late Bhagat Ram during his life time. They did not claim that they were inducted as tenants by Bhagat Ram. Therefore, the question of conferring ownership rights with possession of the suit land upon the appellants- defendants, under the provisions of Section 104 of the H.P. Tenancy and Land Reforms Act, could not have arisen. In any case, the question does not arise from the pleadings, on account of such a plea having not been raised, as stated hereinabove. Hence this question is also answered against the appellants-defendants.

10. In view of the above stated position, the appeal is dismissed.

March 5, 2007. **(Surjit Singh)**
(*Hem*) **Judge.**